

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

<b>GEOFFREY WILLARD ATWELL,</b>	:	<b>CIVIL NO. 1:CV-03-1728</b>
	:	
<b>Plaintiff</b>	:	<b>(Judge Rambo)</b>
	:	<b>(Magistrate Judge Blewitt)</b>
<b>v.</b>	:	
	:	
<b>THOMAS LAVAN, <i>et al.</i>,</b>	:	
	:	
<b>Defendants</b>	:	

**MEMORANDUM AND ORDER**

Before the court is a January 2, 2008 report and recommendation of the magistrate judge addressing the cross-motions for summary judgment filed by Defendants Dr. Stanish and Dr. Bohinski (“the Medical Defendants”) and by Plaintiff. The report recommends that summary judgment be granted in favor of the Medical Defendants and against Plaintiff and that Plaintiff’s motion for summary judgment be denied.

The procedural history of this case will not be set forth herein as it is adequately set forth in the January 2, 2008 report and recommendation. The magistrate judge found that Plaintiff only alleges the personal involvement of the Medical Defendants with respect to his Eighth Amendment claim of denial of proper medical care. The grounds for the Medical Defendants motion for summary judgment are that (1) Plaintiff failed to exhaust his administrative remedies under the Department of Corrections policy, DC-ADM 804, as required pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997(a); and (2) Plaintiff failed to demonstrate that the Medical Defendants had subjective knowledge that their actions presented a substantial risk of harm to Plaintiff and, at most, Plaintiff only presented a disagreement as to the choice of medical treatment.

Because the magistrate judge viewed the failure to exhaust claim as a threshold issue, that issue was the only issue addressed in the report and recommendation. The magistrate judge found that Plaintiff had not exhausted his administrative remedies and recommended that the Medical Defendants' motion for summary judgment be granted.

In Plaintiff's objections to the report and recommendation, he completely by-passes the issue of exhaustion except for a conclusory statement "Plaintiff exhausted his administrative remedies." (Pltf.'s Suppl. Objs., doc. 247 at p. 17.) Plaintiff's objections pertain to issues which do not involve the Medical Defendants.

The magistrate judge's thorough review of the record supports his recommendation that the Medical Defendants' motion for summary judgment be granted on the basis that Plaintiff has failed to exhaust his administrative remedies.

**IT IS THEREFORE ORDERED THAT:**

1) The court adopts the January 2, 2008 report and recommendation of Magistrate Judge Blewitt.

2) The only issue involving Drs. Stanish and Bohinski is an Eighth Amendment claim of inadequate medical care.

3) The motion for summary judgment filed by Defendants Stanish and Bohinski is granted.

4) Plaintiff's motion for summary judgment is denied.

5) The Clerk of Court shall enter judgment in favor of all defendants and against Plaintiff and close the file.<sup>1</sup>

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<sup>1</sup>This court granted summary judgment in favor of the Commonwealth Defendants by order dated March 26, 2008 and deferred the entry of that judgment until the conclusion of the case.

6) Any appeal from this order will be deemed frivolous and not taken in good faith.

s/Sylvia H. Rambo  
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SYLVIA H. RAMBO  
United States District Judge

Dated: April 1, 2008.